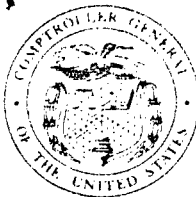


DECISION



15764
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-200016

DATE: December 30, 1980

MATTER OF: Pitney Bowes, Inc.

DIGEST:

1. [Protest of solicitation provisions] not filed with agency or GAO prior to closing date for receipt of proposals is untimely.
2. Letter to agency which states that company is not submitting offer because it finds specifications objectionable does not constitute a protest; although letter need not use word "protest", it must otherwise clearly convey intention to protest.

Pitney Bowes, Inc. protests award of any contract by the Selective Service System under request for proposals (RFP) No. DM-110 which called for proposals by 4:00 p.m. on July 14, 1980, to provide a computer mailing system. In its submissions to our Office, Pitney Bowes contends the specifications overstate the agency's minimum needs, contain no evaluation criteria and are so unduly restrictive that it could not submit a proposal. For reasons discussed below, we dismiss the protest as untimely.

On July 14, before the 4:00 deadline, Pitney Bowes' Regional Office delivered to Selective Service a letter stating its "Home Office has chosen to submit a 'no bid' response based on the information" in an attached intra-company letter from its Manager of Government Relations to its Regional Manager in the Washington area. In this letter, the Home Office prohibited the Regional Manager from submitting an offer because in the Home Office's view, the specifications were conflicting and too restrictive "as we interpret them" and the agency's requirements contained in the Standard

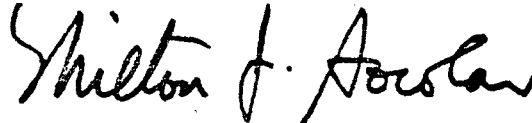
~~813976~~ 114053

of Performance and Acceptance of Equipment section of the RFP were objectionable. In Pitney Bowes' letter to the agency there was no express statement of an intent to lodge a protest nor was Selective Service asked to revise its solicitation: in the attachment, however, the Home Office expressed hope that "further input" would be provided by Selective Service so that Pitney Bowes could compete.

On August 8, Pitney Bowes inquired as to the status of its "protest" and was informed on August 11 that the agency did not consider the July 14 submission to be a protest. After a price analysis confirmed the reasonableness of the price, a contract was awarded to Bell & Howell Company, the only offeror, at a price less than the Government's estimate. In its protest to our Office of August 15, Pitney Bowes contends its failure to use the word "protest" is not decisive in determining whether its letter of July 14 was a protest and that the letter clearly indicated that Pitney Bowes considered the specifications to be unduly restrictive.

Selective Service contends the Pitney Bowes letter of July 14 and its attachment was not a protest and properly was not regarded as such by the agency. We agree. It is true that in Abreen Corporation, B-197261, April 18, 1980, 80-1 CPD 274, we stated that a request for review of procurement procedures need not contain the exact words of protest to be characterized as a formal protest. However, the decision added the condition that the request would have to be reasonably understood "to lodge specific exceptions to the questioned procedures." The Pitney Bowes letter to Selective Service and its attachment cannot, we believe, be reasonably understood to lodge specific exception to anything. While it stated in general terms that the solicitation was restrictive and, in some respects, conflicting, it gave no explanation as to why this might be so. In our view, a protester which chooses not to use the word "protest" has an obligation to otherwise clearly convey its intention to protest and should not rely upon an agency detecting subtle nuances, especially on the day initial proposals are due. We believe the agency could reasonably regard Pitney Bowes' letter as a "no bid" response rather than a protest.

Since we do not view the letter of July 14 to the agency as a protest, the Pitney Bowes protest to our Office of August 15 is clearly untimely under our Bid Protest Procedures, 4 C.F.R. § 20.2 (1980). These procedures require a protest based upon alleged improprieties which are apparent prior to the closing date for receipt of proposals must be filed either with the contracting agency or with this Office prior to such date. All the grounds of protest were apparent upon the face of the RFP and the protest should have been filed prior to the time proposals were due. Since it was not, the protest will not be considered on its merits.

A handwritten signature in black ink, reading "Milton J. Socolar". The signature is written in a cursive, flowing style with a large initial 'M'.

Milton J. Socolar
General Counsel